United States Court of Appeals

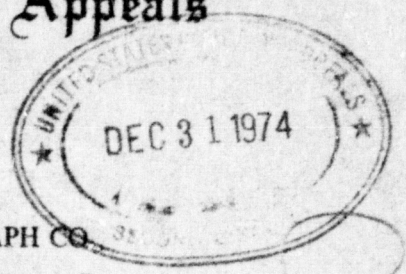
for the Second Circuit

RESPONDENT'S BRIEF

No. 74-1951

United States Court of Appeals

FOR THE SECOND CIRCUIT



AMERICAN TELEPHONE & TELEGRAPH CO.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for Review and Cross-Application for Enforcement of an Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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ABS DUPLICATORS, INC.—1732 Eye Street, N.W.—Washington, D.C.—298-5537

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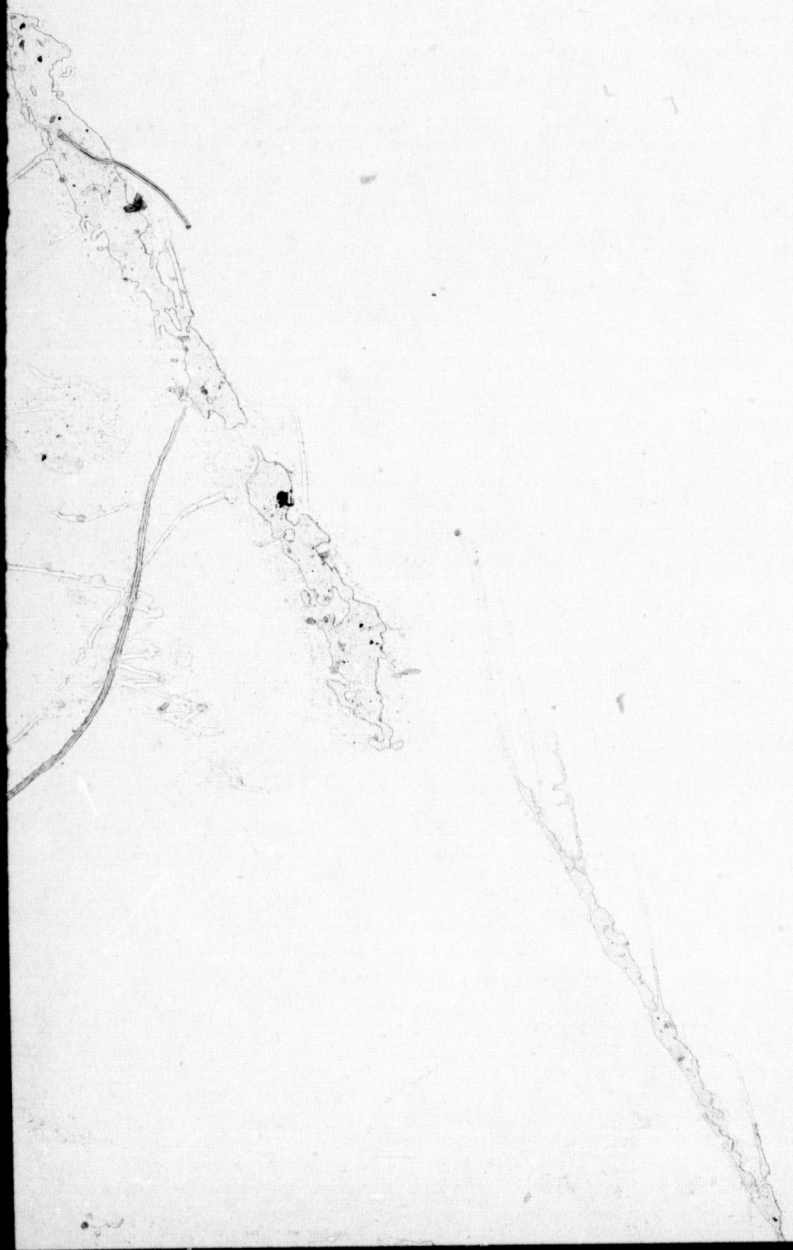

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

COUNTERSTATEMENT OF THE ISSUE PRESENTED

Whether substantial evidence on the record as a whole supports the Board's finding that the Company violated Section 8(a)(1) of the Act by warning Employee Anne Walden of severe disciplinary action for engaging in protected, concerted activity.

COUNTERSTATEMENT OF THE CASE

This case is before the Court upon a petition to review and set aside an order of the Board (A. 139)[1] issued against American Telephone & Telegraph Co. (hereafter "the Company") on June 20, 1974, pursuant to Section 10(c) of the National Labor Relations Act as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., 151, *et seq.*). In its cross-application for enforcement, the Board has requested that its Order be enforced in full. The Board's Decision and Order are reported at 211 NLRB No. 115. The Court has jurisdiction of the proceedings under Section 10(e) and (f) of the Act, the unfair labor practices having occurred at New York, New York, where the Company is engaged in providing telecommunication and related services. No jurisdictional issue is presented.

I. THE BOARD'S FINDINGS OF FACT

A. The Company decides on operational changes and the Union meets with the Company concerning the implementation of the changes

At its New York City traffic division the Company employs some 1200 regular full-time and part-time operators who are engaged primarily in placing phone calls originating in the United States to foreign countries (A. 128, 27-28). Until the fall of 1973 the New York City overseas division, under the supervision of Operations Manager Allen Gamble, was divided into four operating districts — designated as A, B, C and D — each of which was under the supervision of a district operations manager (A. 129-130; 29, 31, 32).

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[1] "A." references are to the portions of the record printed as the Appendix. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

Mrs. Anne Walden, an overseas operator in D District under the supervision of Manager W. E. Keegan, has been employed by the Company since 1946 (A. 129; 26, 31). During the last 10 years Mrs. Walden has held a number of offices in the Union[2] (A. 129; 26). Thus, in 1973, she was a member of the Union's executive committee, chairlady of the overseas traffic section, and a member of the long lines bargaining committee (A. 129; 21, 26-27). Along with her other duties as a union bargaining representative, Mrs. Walden was also responsible for processing grievances involving the 1200 operators in Manhattan and an additional 300 overseas operators at the Company's White Plains facility (A. 129; 26-27).

At a Union-Company meeting on June 26, 1973, Division Manager Gamble announced to Walden, and her fellow Union representatives, that A District would be terminated and the operators there were to be transferred into C and D Districts in September (A. 129-130; 27-28, 29, 32). On that occasion, Gamble also stated that the Company planned to draw up a new division-wide seating plan — that is, the assignment of operators to a particular shift or "tour" — which was to go into effect in mid-October (A. 130; 29-32). Gamble advised the Union that W. R. Nichols, manager for A District, would supervise these changes and work with the Union (A. 130; 29-32).

During the next two months Walden met with Nichols, or his assistant, District Operations Supervisor, William Beckett, on several occasions to discuss these matters (A. 130; 32-33, 90, 92). A matter of concern was the effect of these decisions on the contractual right of the approximately 1000 full-time operators to bid, on a seniority basis, for the tours available under the new seating plan (A. 29, 30-31, 32, 94). In this regard, Walden found it necessary to obtain job data, which the Union

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[2] Local 1150, Communications Workers of America.

did not possess, pertaining to the remaining 200 operators who worked on a part-time basis in the division (A. 32-33). Walden had generally been successful in the past in obtaining similar information from the Company (A. 29, 32-33, 45).

At the Friday September 14 meeting, Walden requested the total number of part-time tours assigned throughout the division (A. 130, 140; 36, 98). Beckett told Walden that he would get that information to her later that day. After the meeting Beckett prepared a slip of paper purporting to contain the requested data, and it was delivered to Walden in a large inter-Company envelope that afternoon (A. 130, 140; 18, 35-36, 100-101). Walden tried unsuccessfully to decipher the data and then phoned Beckett, but Beckett had left for the day (A. 130, 140; 18, 35-38).

B. The Company threatens employee Walden orally and in writing with severe discipline because of her participation in protected concerted activity

Before her scheduled starting time on Monday, September 17, Walden attempted to see Beckett about the data she had received but he was on a coffee break (A. 130, 132, 140; 38). Walden left a message for Beckett to call her, but received no reply (A. 130, 132; 38-39, 102). At 9:45 A.M., while on her scheduled break, Walden again went to Beckett's office (A. 140, 130, 132; 39, 102). Walden had met with Beckett in Beckett's office without an appointment on previous occasions "generally, for the purpose of clarifying or receiving information" (A. 81, 102). Beckett's office was enclosed by partitions, which did not extend all the way to the ceiling, and had no door (A. 131; 42, 111). On this occasion, Walden held out the slip of paper containing the part-time information and asked if this was the information Beckett had sent her (A. 130-132, 140-142; 39). When Beckett replied affirmatively, Walden, in an increasingly

loud voice, asked, "Well, what is it?" and referred to the data as "garbage" (A. 141, 131, 133-134; 39, 102-103). Walden also charged that she had requested this information many times, that the type of information requested had been furnished her on other occasions, and that Beckett and his superior Nichols, should be able to interpret her requests (A. 141, 131; 39-40, 103). At several points during the meeting Beckett heatedly told Walden that he would not continue the meeting unless her tone and manner improved (A. 141, 131; 39, 103-104). Beckett further stated that Walden had been supplied the information she had requested. Walden responded by shouting that she was not there to play games and by making "some remark about [Beckett's] intelligence" (A. 141, 131-132; 40, 103-104). Thereupon Beckett told Walden that "the meeting was over" (A. 141, 131; 75, 104).

The entire exchange between Walden and Beckett lasted 3 to 5 minutes (A. 141; 40, 110). Walden's voice was heard by 5 supervisors and 5 other "persons" (A. 143 n. 1; 117, 119-121, 123-124). Walden's loud tone of voice could be heard, but in the main, the substance of what she said could not be made out (A. 116-118, 119-122, 123-125).

When Walden left, Beckett decided that Walden should be given a warning notice (A. 141, 132; 105). Accordingly, Beckett summoned Walden to Manager Nichol's office where he advised her that he was issuing her a warning on account of her behavior in his office earlier that day and stated that this warning would be placed in her personnel file (A. 141, 132; 40-41, 107). In the course of this conversation, Beckett warned her that any repetition of her conduct would lead to strong disciplinary action being taken against her (A. 141; 21, 40-41, 106-108). Walden replied that she did not think that this treatment was fair (A. 41, 108).

Beckett thereafter prepared and filed a warning slip addressed to Walden's supervisor W. E. Keegan issued against Walden both in her capacity as an overseas operator and as a union chairlady (A. 141, 132; 21). The warning slip stated that Beckett had warned Walden that he would not tolerate conduct similar to that which had taken place in "an incident in which Mrs. Walden became abusive and extremely loud in [his] office" and that "should there be any similar occasion . . . in any other contact with Management, she would be subject to very severe disciplinary action" (A. 141; 21, 105-106).

II. THE BOARD'S CONCLUSIONS AND ORDER

On the above facts, the Board, in reversing the Administrative Law Judge, found, that Walden's "conduct was not so opprobrious as to be unprotected" (A. 144) and accordingly concluded that the Company violated Section 8(a)(1) of the Act by threatening her with severe discipline for engaging in protected, concerted activity.

The Board's order requires the Company to cease and desist from the unfair labor practice found and from "in any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights protected by Section 7 of the Act" (A. 145). Affirmatively, the Board's order requires the Company to expunge from Walden's personnel file and other of its records all copies of, or references to, the unlawful warning notice, and to post the appropriate notices (A. 145-146).

ARGUMENT

SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE SUPPORTS THE BOARD'S FINDING THAT WALDEN'S BEHAVIOR IN SUPERVISOR BECKETT'S OFFICE DID NOT DEPRIVE HER OF THE ACT'S PROTECTION AND THAT THE COMPANY THEREFORE VIOLATED SECTION 8(a)(1) OF THE ACT BY THREATENING HER WITH SEVERE DISCIPLINE FOR ENGAGING IN PROTECTED, CONCERTED ACTIVITY.

As shown in the Counterstatement, the Company's disciplinary action against employee Walden was triggered by Walden's September 17 complaints in Supervisor Beckett's office made in her capacity as union representative concerning the inadequacy of certain data information furnished by the Company pursuant to her prior request. In attempting in good faith to secure fuller information, Walden was plainly engaged in protected concerted activity. Hence, the Company's response was on its face in derogation of Section 7 of the Act, which guarantees employees like Walden the right to present the Company with complaints designed to effectuate the proper administration of the collective bargaining agreement. See, *N.L.R.B. v. Interboro Contractors, Inc.*, 388 F.2d 495, 499-501 (C.A. 2, 1967); *N.L.R.B. v. John Langenbacher Co.*, 398 F.2d 459, 461-463 (C.A. 2, 1968), cert. denied, 393 U.S. 1049; *Hugh H. Wilson Corp. v. N.L.R.B.*, 414 F.2d 1345, 1355-1356 (C.A. 3, 1969), cert. den., 397 U.S. 935. Before this Court the Company neither challenges this Board finding nor the Board's further finding that the rude manner in which Walden presented her complaint concerning the inadequacy of the information supplied was part of the *res gestae* of the protected activity (A. 141-143).

Rather, the sole issue presented by the Company's petition to review is the Board's conclusion that Walden's behavior at the meeting with Beckett was not so opprobrious as to deprive her of the protective mantle of the Act (A. 143). In this regard, the law is settled that employee

activity otherwise protected by Section 7 does not lose this protection unless the conduct is so flagrant and egregious as to place the employee beyond the pale of the Act's protection. *Crown Central Petroleum Corporation v. N.L.R.B.*, 430 F.2d 724, 729-731 (C.A. 5, 1970); *N.L.R.B. v. Thor Power Tool Co.*, 351 F.2d 584, 587 (C.A. 7, 1965), *N.L.R.B. v. Illinois Tool Works*, 153 F.2d 811, 815-816 (C.A. 7, 1946); *Hugh Wilson Corp. v. N.L.R.B., supra*, 414 F.2d at 1355-1356; *Socony Mobile Oil*, 153 NLRB 1244 (1965), enforced on other grounds, 357 F.2d 662, 663 (C.A. 2, 1966). See generally, *N.L.R.B. v. Washington Aluminum Co.*, 370 U.S. 9, 16 (1962).[3] The case law is clear that an employer may not sit in absolute judgment on the propriety of conduct engaged in by his employees in the course of activity protected by Section 7 of the Act and that not every impropriety committed in the course of such activity deprives employees of the protective mantle of the Act. On the other hand, some employee conduct, even though occurring in the course of Section 7 activity, may be so opprobrious that disciplinary action by the employer is justified.

Thus, both the Board and the Courts have long recognized that "the employees' right to engage in concerted activity may permit some leeway for impulsive behavior which must be balanced against the employer's right to maintain order and respect" *N.L.R.B. v. Thor Power Tool Co., supra*, 351 F.2d at 587; *Crown Central Petroleum Corp. v. N.L.R.B., supra*, 430 F.2d at 730. Of course, "each case of this type must be decided on its own distinctive facts" *N.L.R.B. v. Leece-Neville Co.*, 396 F.2d 773, 774 (C.A. 5, 1968). "Initially the responsibility

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[3] See in addition to the cases cited above, *N.L.R.B. v. Leece-Neville Co.*, 396 F.2d 773, 774 (C.A. 5, 1969); *Boaz Spinning Co. v. N.L.R.B.*, 395 F.2d 512, 514 (C.A. 5, 1968); *N.L.R.B. v. Efco Mfg. Co.*, 227 F.2d 675, 676 (C.A. 1, 1955), cert. denied, 350 U.S. 1007.

to draw the line between these conflicting rights rests with the Board, and its determination, unless illogical or arbitrary, ought not to be disturbed" *N.L.R.B. v. Thor Power Tool Co., supra,* 351 F.2d at 587.[4]

In the instant case, the Board reasonably concluded that Walden's behavior was neither so insubordinate nor such an affront to the Company's authority over its employees as to place her beyond the pale of the Act's protection. As shown *supra,* pp. 4-5, both Walden's characterization of the data supplied by the Company as garbage and her comments concerning Beckett's lack of intelligence in not being able to interpret her request properly pertained directly to her complaint concerning the inadequacy of the data supplied. In finding that these shouted comments were not of such a serious character as to remove statutory protection, the Board took into account the fact that, as has long been recognized, passions run high in labor disputes and strong language is commonplace. See, *Linn v. United Plant Guard Workers,* 383 U.S. 53, 60-61 (1966);[5]

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[4] The Board reversed the Administrative Law Judge, who had recommended dismissal of the complaint in its entirety. Conclusions, interpretations, law and policy are open to full review by the Board, which is to give the Administrative Law Judge's findings such weight as in reason and experience they deserve. See *Universal Camera Corp. v. N.L.R.B.,* 340 U.S. 474, 494-496 (1951). In reversing the Administrative Law Judge, the Board differed only on the legal conclusion to be drawn from the substantially uncontested facts and not on any substantial questions of the credibility of the witnesses. Further, as the Board, not the Administrative Law Judge, carries the ultimate responsibility for striking the aforementioned balance between the conflicting rights, and as the Board's decision was neither "illogical or arbitrary," (*Falcon Plastics-Division of B-D Laboratories, Inc. v. N.L.R.B.,* 397 F.2d 965, 967 (C.A. 9, 1968)), that decision ought not be disturbed. See *Crown Central Petroleum Corp. v. N.L.R.B.,* 430 F.2d 724, 730 n. 23 (C.A. 5, 1970).

[5] In *Linn v. United Plant Guard Workers, supra,* 383 U.S. at 60-61, the Court observed:

> [T]he Board has concluded that epithets such as "scab," "unfair" and "liar" are commonplace in these [organization] struggles and not so indefensible as to remove them from the protection of §7, even though the statements are erroneous and defame one of the parties to the dispute.

N.L.R.B. v. Thor Power Tool Co., supra, 351 F.2d at 586; *Hugh H. Wilson v. N.L.R.B., supra,* 414 F.2d at 1356 n. 20; *Crown Central Petroleum Corp. v. N.L.R.B., supra,* 430 F.2d at 730; *Bettcher Manufacturing Corp.,* 76 NLRB 526, 527 (1948). Furthermore, the Board deems it desirable that employees be placed in the status of equals in dealing with management both in negotiating a collective agreement and thereafter in handling grievances or participating in other legitimate union activities arising in connection with the administration of the agreement. *Bettcher Manufacturing Corp., supra,* 76 NLRB at 527;[6] *Crown Central Petroleum Corporation,* 177 NLRB 322-323 (1969), enforced, 430 F.2d 724 (C.A. 5, 1970). To effectuate this policy, the Board accords employees leeway in dealing with management so long as they do not engage in flagrant misconduct. Measured against this standard, Walden's choice of language and tone of voice were not out of bounds.

The Company's characterization (Br. 8-9, 11, 13-15) of this incident as involving Supervisor Beckett's being abused by employee Walden on the plant floor and suffering a loss of face among the employees is a highly

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[6] As the Board stated in *Bettcher Manufacturing Corp., supra,* 76 NLRB at 1527, quoted with approval in *Crown Central Petroleum, supra,* 430 F.2d at 731:

> A frank, and not always complimentary, exchange of views must be expected and permitted the negotiators if collective bargaining is to be natural rather than stilted. The negotiators must be free not only to put forth demands and counterdemands, but also to debate and challenge the statements of one another without censorship, even if, in the course of debate, the veracity of one of the participants occasionally is brought into question. If an employer were free to discharge an individual employee because he resented a statement made by that employee during a bargaining conference, either one of two undesirable results would follow: collective bargaining would cease to be between equals (an employee having no parallel method of retaliation), or employees would hesitate ever to participate personally in bargaining negotiations leaving such matters entirely to their representatives.

misleading reading of the record. First, Walden's confrontation with Beckett took place, not on the plant floor in the presence of other employees, but in Beckett's office. According to Beckett's own testimony, Walden had met with Beckett in Beckett's office without an appointment on previous occasions, "generally . . . for the purpose of clarifying or receiving information" (A. 39, 102). Secondly, the Company's claim that Walden's behavior denigrated Beckett, a symbol of the Company's authority, in the eyes of the employees is undercut by the fact that the 3 supervisors who testified that they heard Walden's loud voice emanating from Beckett's doorless office indicated that they could not make out the substance of what was said, and by the additional record evidence that no fewer than 5 of the 10 persons who were in a position to overhear Walden's voice were supervisors. Specifically, Supervisor Helen Forino, who was in a conference room with 3 other supervisors at the relevant time, testified that she could not discern what Walden was saying (A. 119-122). Supervisor Elizabeth Pisko, who was in the conference room with Forino, testified only that she heard Walden's voice but did not realize that it was directed at Beckett (A. 123-125). And Supervisor Sandra Hooper, who was in her own office during the exchange, testified that she could discern Walden's use of the word "garbage" but could not make out anything else that was said (A. 116-118). Nor did she specify the job status of the five people whom she stated were in the office with her at the time (A. 117). None of them was called by the Company to testify. Hence, it appears that the Company has not come forward with specific evidence as to the number of employees, if any, who actually overheard Walden.[7]

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[7] Contrary to the Company's contention (Br. 12-14) the factors considered by the Court in *Crown Central Petroleum Corp. v. N.L.R.B.*, 430 F.2d 724 (C.A. 5, 1970) support the Board's position rather than the Company's. There, accepting above-mentioned controlling principles, the court enforced the Board's finding that the employer violated Section 8(a)(1) by disciplining two employees acting as union

(continued)

At most only a minimal disruption to the Company's operations resulted from Walden's loud behavior, which lasted only a couple of minutes (A. 141 n. 1). Supervisor Hooper testified that after looking at one another upon hearing Walden use the word "garbage," she and the others in her office just "went back to what they were doing" (A. 117). All that transpired in the conference room was that Supervisor Pisko said "There she goes again"[8] and the supervisors "paused" to try to listen (A. 124, 127). In addition, the Company has cited no evidence that reports of this incident were disseminated among the Company's employees.

In view of the fact that Walden's remarks were not grossly insubordinate and, in any event, were only overheard by a small number of persons who could discern their tone but not their substance, the Board could properly conclude that Walden's behavior was not such an interference with the Company's authority over its employees as to override Section 7's protection. Obviously, this is not a case where the Company was forced to choose between disciplining Walden and running the risk of a

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[7] (continued) committeemen who asserted at a closed grievance meeting in the presence of four other employees that a supervisor's version of the incident that was the subject of the meeting was in effect "damn lies" (430 F.2d at 725-726 n. 3). In so holding, the court cautioned that it did not intend "to unnecessarily generalize for a class of cases peculiarly tied to their facts" (*Id.* at 731). To be sure, as the Company notes (Br. 14), the court distinguished a closed grievance meeting from a situation where an employee assails a supervisor with abuse on the floor of the plant where he stood as a symbol of the Company's authority (*Id.* at 731). However, as we have shown, *supra*, pp. 4-5, 11, in the instant case Walden met with Beckett in Beckett's office and not on the plant floor in the presence of hearing of numerous employees. More significantly, the court asserted at the close of its opinion that "within the confines of a grievance meeting, it would require severe conduct indeed to convince us that the interests of fair give and take between equal parties could be justifiably submerged" (*Id.* at 731). In the instant case, Walden's meeting with Beckett was likewise a meeting between equals for legitimate collective bargaining administration purposes.

[8] In this connection, Pisko explained that in her dealings with Walden she noticed that Walden's voice had a tendency to get very loud (A. 124).

"complete breakdown of plant discipline" *Boaz Spinning Co. v. N.L.R.B.*, 395 F.2d 512, 516 (C.A. 5, 1968). Therefore, while Walden may have been impertinent in the course of her complaints to Supervisor Beckett concerning the adequacy of the job status information furnished by the Company, the Board properly concluded that her conduct was not so flagrant as to take her outside the protection afforded by Section 7.[9]

Finally, in challenging the balance struck by the Board, the Company erroneously places considerable weight on Walden's alleged violation of "contractual procedures" for grievance meetings (Br. 9-11, 16).[10] This

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[9] The Company's reliance (Br. 15-16) on *N.L.R.B. v. Prescott Industrial Products Co.*, 500 F.2d 6 (C.A. 8, 1974) is misplaced. In that case, the employer's plant manager gave a lawful captive audience speech to a group of employees, pointing out the disadvantages of a union. When an employee stood up to ask a question, the plant manager replied, as was his right under Board precedent (See, *e.g., Livingston Shirt Corp.*, 107 NLRB 400 (1953)), that there would be no question and answer session. Thereupon, the employee repeated his request several times in a "loud and arrogant" fashion and pointed his finger at the plant manager "in the full view of the assembled employees" (500 F.2d at 8). The Eighth Circuit viewed that conduct as a "challenge and deliberate defiance" of management and held that the employer's discharge of the employee involved was not in violation of the Act.

However, the court in *Prescott* itself expressly distinguished the captive audience speech situation presented there from a "grievance or bargaining meeting where 'employees must be placed in the status of equals in dealing with management.' " (Footnote omitted) (*Id.* at 11.). In the latter situation the Court felt that employees should be accorded some leeway to engage in impulsive behavior or exuberant conduct (*Id.* at 10-11). The distinction drawn by the court is also applicable to the instant meeting between management official Beckett and employee Walden, who acted in her capacity as union representative to obtain improved information for legitimate union purposes. See, *supra*, pp. 3-4.

[10] The contract provisions relied upon by the Company provide as follows (A. 130, 135; 61, 97):

> Section 15.60: To the extent that service and coverage requirements permit, an employee who is an authorized representative of the Union shall, with reasonable notice and upon request of the Union, be excused without pay or granted leaves of absence without pay to conduct union activities.
>
> Section 19.30: The Company and the Union recognize that it is in the best interests of both parties, the employees and the public, that all dealings between them continue to be characterized by mutual responsibility and respect . . .

asserted ground for discipline is an afterthought, for there is no mention that Walden had violated any contractual procedures in the warning notice written by Supervisor Beckett (A. 21) and the only reason for the notice given by Beckett at the hearing was Walden's ". . . personal attack on me" (A. 106). Nevertheless, the Company asserts (Br. 9-10, 16) that Walden violated Section 19.30, which provides that all dealings between the Company and the Union shall be characterized by mutual respect, and Section 15.60, which provides that employees, upon reasonable notice, shall be excused without pay to conduct union business (A. 61, 97). With regard to the mutual respect provision, however, it should be noted that Walden's remarks were always germane to the matter of the information requested and were not uttered out of defiance or malice. Likewise, there was also no violation of the notice provision. The Company's assertion that the notice requirement was intended to apply to the instant 3 to 5 minute meeting on Walden's break time is, we submit, called into question by the fact that Beckett, who knew of this provision, testified on direct examination that he did not tell Walden to make an appointment with him on this occasion and he further testified that he had met with her on other occasions without advance notice for the purpose of clarifying information (A. 102, 62).[11] Finally, even assuming *arguendo* that Walden's conduct violated these provisions, the violations were plainly of such an inconsequential nature that, as shown *supra*, supervisor Beckett did not see fit to refer to them in the warning notice against Walden.

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[11] It should be noted that neither the hortatory language of the mutual respect provision nor the language of the union activities provision expressly prohibits vigorous and vociferous efforts on the part of union representatives to obtain information relevant to the policing of the terms of the collective agreement. In any case, the Company does not contend that the contract language is so unambiguous as to constitute a "clear and unmistakable" waiver of statutory rights of employees like Walden to participate actively in the administration of the contract. *Fafnir Bearing Co. v. N.L.R.B.*, 362 F.2d 716, 722 (C.A. 2, 1966); *Timken Roller Bearing Co. v. N.L.R.B.*, 325 F.2d 746, 751 (C.A. 6, 1963), cert. denied, 376 U.S. 971.

In sum, we submit that it was reasonable for the Board to strike the balance in favor of the Section 7 rights involved in the instant case. Accordingly, the Board properly found the Company violated Section 8(a)(1) of the Act by threatening employee Walden with severe discipline for engaging in protected activity.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition to review should be denied, and an order should issue enforcing the Board's order in full.

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December, 1974

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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Petitioner,	)	No. 74-1951
v.	)	
NATIONAL LABOR RELATIONS BOARD,	)	
Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that two (2) copies of the Board's offset printed brief in the above-captioned case have this day been served by first class mail upon the following counsel at the addresses listed below:

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/s/ Elliott Moore
Elliott Moore
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.
this 30th day of December, 1974